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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/519,165

02/09/2005

Andres Quinta Cortinas

6463/PCT

5233

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EXAMINER

SMITH, KIMBERLY S

ART UNIT

PAPER NUMBER

3644

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/519,165

Applicant(s)

QUINTA CORTINAS ET AL.

Examiner

Kimberly S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3 and 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/23/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 11/01/06 have been fully considered but they are not persuasive.
2. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
3. The Applicant is attacking the references individually such as stating that "Streichenberger does not disclose concrete dead weights..." wherein the base reference of Marissal discloses the use of dead weights and the Byle reference teaches that concrete and pig iron are known equivalents in the art. As such, the Applicant is attacking the references based upon what is not taught by the reference and does not specifically argue against that which the reference is used to teach. With respect to the Marissal reference disclosing the oysters being cultured are contained in closed spaces, which protects the oysters, thereby there is no recognized need for adjusting the submersion level. This is respectfully disagreed with as it is maintained that one with skill in the art would recognize that structure of the oyster culturing device, and not just the oysters themselves, are affected by weather conditions and as such, one with skill in the art would recognize the lowering of the device as taught by Streichenberger in the event of rough water would minimize damage to the structure of the Marissal device. With respect to the arguments regarding the Zemach reference teaching away from the prior art devices, it is noted that it was the prior art devices and not the Zemach invention itself which was

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used as a teaching in the rejection. Reference MPEP 2123 where it is stated that "the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of art, relevant for all they contain."

4. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Specification***

5. The substitute specification filed 11/01/06 is approved and has been entered.

### ***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marissal, US Patent 5,653,193 in view of Streichenberger, US Patent 4,257,350 and further in view of Byle, US Patent 6,431,107 and further in view of Zemach et al., US Patent 5,412,903 (Zemach).

Marissal discloses a shellfish farm comprising at least one line of cables (1) bearing spaced culture ropes (i.e. ropes from which net 24 are suspended), the line being suspended horizontally from two end floats (i.e. the two outermost floats (18)) which support the at least one line in association with intermediate support buoys (i.e. the buoys (18) intermediate of the end floats) and is further anchored by dead weights (10, 12) positioned at each end of the at least one line (as viewed in Figure 1), wherein the at least one line of cables is submersible and is elevated from a sea floor while guided by vertical movement of the two end floats (reference Figure 1). However, Marissal discloses the dead weights are kentledges, i.e. pig iron, not concrete. Byle shows that concrete is an equivalent structure of pig iron known in the art (column 2, line 31). Therefore, because these two ballast weights were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute concrete for pig iron in instances where pig iron was not readily available for manufacture. Marissal further does not disclose the two end floats being submerged or raised based on inner volume of the floats being variable and being connected to a surface buoy including an air intake valve. Streichenberger teaches within the same field of endeavor the use of floats (31) being submerged and raised based on an inner volume of the float being variable and being connected to a surface buoy (7) including an air intake valve (Figure 6) for adjusting the depth of the aquatic device dependent upon the expected weather conditions (i.e. rough seas subsequent to stormy weather). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the variable depth floats as taught by Streichenberger with the device of Marissal in order to provide for a device which can be lowered in the water to minimize damage to the structure during rough weather. Marissal further

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discloses the floats are connected to the dead weights but Marissal does not disclose the use of an anchoring system. Zemach teaches within the same field of endeavor the use of an anchoring system (reference Prior Art disclosure of Figures 1A and 1B) having an anchoring system connected to dead weights for maintaining tension on the cable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the anchoring system as taught by the prior art of Zemach with the device of Marissal as modified by Streichenberger so as to maintain tension on the line when the device is subjected to varying water depths caused by tidal fluctuations.

Regarding claim 4, Marissal as modified discloses an anchoring system (as taught by Zemach) that comprises at least one end buoy (14, Zemach) and arranged so as to use uplift thrust of the buoy to pull at each end of the floats by means of tensioning cables 912, Zemach) and pulleys affixed to the dead weights (as discussed in Zemach at column 2, lines 12-14).

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,


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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Kimberly S Smith  
Examiner  
Art Unit 3644

kss